IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition No. 1699 of 2004

Shri Shubhlal Bhagwanji
Shanghavi & Anr. .. Petitioner.
V/s.
Special Director, Enforcement
Directorate, Mumbai and Anr. .. Respondents.

Mr. D.C. Bagave for the Petitioner.
Mr. H.V. Mehta for the Respondent No. 1.
Mrs. P.H. Kantharia, APP. for the Respondent No. 2.

CORAM : H.L. GOKHALE &
S. RADHAKRISHNAN, JJ.
DATED : 30.08.2004.

P.C.:-

1. Heard Mr. Bagave for the Petitioner. Mr. Mehta appears for the Respondent No. 1. Mrs. Kantharia, APP appears for the Respondent No. 2. The Petitioner is aggrieved by the order dated 9.7.2004 passed by the Appellate Tribunal For Foreign Exchange under section 52(2) of the Foreign Exchange Regulation Act, 1973. The Petitioners have filed an Appeal to this Tribunal and whenever any such appeal is filed under section 52(2), it requires the aggrieved person to deposit a sum imposed by way of penalty under section 50 of the said Act. The second proviso to Section 52(2) gives a discretion to the Appellate Board to dispense with such a deposit either unconditionally or subject to such conditions as it may deem fit where it is of opinion that the deposit to be made will cause undue hardship to the appellant. Mr. Bagave is pressing this clause and he submits that undue hardship would be caused to the appellant. He has also cited the Judgment of the

Delhi High Court in the case of **Sri Krishna V/s. Union of India 1998 (104) E.L.T. 325 (Del.)** and particularly, paragraph 8 thereof, which requires that if the appellant has prima facie case, it is to be considered by the Tribunal.

2. We have gone through the order passed by the Tribunal. The order discards the submission made on behalf of the appellant that he was not incharge of the business at the relevant time, which is the requirement under section 50 of that Act. However, the Tribunal has also referred to the financial status report and based thereon has come to the conclusion that the submission made by the Petitioner could not be accepted. Inspite of that, considering that the Appellant is a British passport holder, the Tribunal has directed him to deposit only 50% of penalty. Thus inspite of there being a case of 100% penalty, the Tribunal has exercised a discretion in favour of the Appellant.

3. We do not think that in these facts, this Court should interfere and pass any direction in a proceeding arising out of actions under the Foreign Exchange Regulation Act, 1973 read with Section 49(3) and 49(4) of the Foreign Exchange Management Act, 1999. Mr. Bagave prays for extension of time to deposit. The

Tribunal has given 60 days time from 9.7.2004. We grant him further period thereafter and he may deposit

the same by the end of October, 2004, The matter has already been fixed on 5.11.2004 before the Tribunal. The learned counsel makes a further request that the appeal before the Tribunal may be decided at the earliest. The Tribunal will endeavour to do so. Petition disposed of.

(H.L. GOKHALE, J.)

(S. RADHAKRISHNAN, J.)